

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 04-44875-RJK

Chapter 13

Michael A. Lehmann,

Debtor.

OBJECTION TO CONFIRMATION

TO: Debtor, Michael A. Lehmann; Attorney for Debtor, Robert J. Everhart; Jasmine Z. Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Bankruptcy Solutions Inc., ("GMAC") a secured creditor of Debtor, by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor.

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and GMAC requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Plan is scheduled for 10:30 a.m. on November 18, 2004, before the Honorable Robert J. Kressel, in Courtroom 8 West United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on August 16, 1999 and the case is now pending in this Court.

5. GMAC holds a valid, perfected interest in a 1999 GMC Jimmy, VIN 1GKDT13W3X2542436, (the "Vehicle"). The value of the Vehicle is \$9,300.00.

6. Copies of GMAC's agreement with Debtor (the "Contract") and evidence of perfection of GMAC's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The balance due to GMAC as of the petition date totals \$8,499.21 together with interest accruing at the contract rate of 10.99%. The fair market value of the Vehicle is \$9,300.00. Accordingly, the claim of GMAC should be treated as secured to the extent of \$9,300.00.

8. The Plan, however, provides for (i) GMAC's secured claim of \$6,625.00; (ii) total payment on GMAC's secured claim of \$6,936.00; and (iii) monthly payments of \$578.00 commencing in month 2 for 12 months.

9. Using the contract rate of interest, the Plan fails to satisfy GMAC's secured claim plus interest utilizing the payments set forth by Debtor. An amortization of the proposed payments is attached hereto.

10. The Plan does not comply with the provisions of Chapter 13.

11. The Plan does not provide GMAC with adequate protection of its interest in the vehicle.

12. Movant gives notice that it may, if necessary, call J. Wood or another representative of GMAC to testify at the hearing.

13. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, GMAC respectfully requests this Court to enter an order denying confirmation of the Debtor's proposed plan and such other further relief as is just and equitable.

Dated: September 30, 2004____

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn

Marilyn J. Washburn (#0324140)

7700 Bonhomme, 7th Floor

St. Louis, MO 63105

(314) 727-0101

Attorneys for GMAC

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No.04-44875-RJK
Chapter 13

Michael A. Lehmann,

Debtor.

***MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION***

GMAC submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

GMAC holds a valid, perfected interest in a 1999 GMC Jimmy, VIN 1GKDT13W3X2542436 (the "Vehicle").

The balance due to GMAC as of the petition date totals \$8,499.21. The interest rate on the Contract is 10.99%. The fair market value of the Vehicle is \$9,300.00. Accordingly, the claim of GMAC should be treated as secured to the extent of \$9,300.00.

The Plan, however, provides for (i) GMAC's secured claim of \$6,625.00; (ii) total payment on GMAC's secured claim of \$6,936.00; and (iii) monthly payments of \$578.00 commencing in month 2 for 12 months.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy GMAC's secured claim plus interest at the contract rate. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, GMAC respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: September 30, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn

Marilyn J. Washburn (#0324140)

7700 Bonhomme, 7th Floor

St. Louis, MO 63105

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Attorneys for GMAC

**UNITED STATES BANKRUPTCY COURT
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UNSWORN DECLARATION FOR PROOF OF SERVICE

Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, PC, with an office address of 7700 Bonhomme, 7th Floor, St. Louis, MO 63105, declares that on the date set forth below, I served the annexed **Objection to Confirmation** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Louis, Missouri addressed to each of them as follows:

United States Trustee
300 South 4th Street, Suite 1015
Minneapolis, MN 55415

(Attorney for Debtor)
Robert J. Everhart
P.O. Box 120534
New Brighton, MN 55112

(Debtor)
Michael A. Lehmann
10981 Bluebird Street
Coon Rapids, MN 55433

(Trustee)
Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 30, 2004

Signed: /e/ Marilyn J. Washburn

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 04-44875-RJK

Chapter 13

In re:

Michael A. Lehmann,

Debtor.

ORDER

This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtor. Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 plan of Debtor is denied.

Dated: _____

Robert J. Kressel
United States Bankruptcy Judge

CHAB
ROSEVILLE, MN

99 AUG 24 AM 10:07

OTHER IMPORTANT AGREEMENTS

Ownership and Risk of Loss. You agree to pay the Creditor all you owe under this contract, even if the vehicle is damaged, destroyed or stolen. You agree not to remove the vehicle from the United States or Canada or to sell, rent, lease or otherwise transfer any interest in the vehicle or this contract without the Creditor's written permission. You agree not to expose the vehicle to intense, extreme or confusion, or other involuntary transfer, even if the vehicle was not the subject of judicial or administrative action. You will make sure the Creditor's security interest (lien) on the vehicle is shown on the title. If the Creditor pays any repair bills, salvage bills, taxes, fines, or other charges on the vehicle, you agree to repay the amount when the Creditor asks for it.

Security Interest. You give the Creditor a security interest in (1) the vehicle being purchased, (2) any accessories, equipment and replacement parts installed in the vehicle, (3) any insurance premiums and charges for service contracts returned to the Creditor, (4) any proceeds of insurance policies on your life or health that are financed in this contract, (5) the security interest in all amounts you owe in this contract and any transfer, renewal, extension or assignment of this contract. It also secures your other agreements in this contract.

Prepayment Refund. You can prepay all of your debt and get a refund of part of the Finance Charge. The refund will be figured by the Actuarial Method—a method commonly used to figure refunds on installment contracts. The Creditor will subtract and keep \$15 from the Finance Charge before figuring the refund and then will subtract the refund from the total amount you owe. There will be no refund paid to you if it is less than \$1.00.

Required Physical Damage Insurance. You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. At any time during the term of this contract, if you do not have physical damage insurance which covers both the interest of you and the Creditor in the vehicle, then the Creditor may buy it for you. If the Creditor does not buy physical damage insurance which covers both interests in the vehicle, it may, if it decides, buy insurance which covers only the Creditor's interest.

The Creditor is under no obligation to buy any insurance, but may do so if it decides. If the Creditor buys either of these coverages, it will let you know what type it is and the charge you must pay. The charge will consist of the cost of the insurance and a finance charge, at the highest lawful contract rate, you agree to pay the charge in equal installments along with the payments shown on the payment schedule.

If the vehicle is lost or damaged, you agree that the Creditor can use any insurance settlement either to repay the vehicle or to apply to your debt.

Late Charge. You will have to pay a late charge on each payment received by the Creditor more than ten days late. The charge is shown on the front. Appearance of a late payment or late charge does not excuse your late payment or mean that you can keep making payments after they are due. The Creditor may also take the steps set forth below if there is any late payment.

Optional Insurance or Service Contracts. This contract may contain charges for optional insurance or service contracts. If the vehicle is repossessed, you agree that the Creditor may claim benefits under these contracts and terminate them to obtain refunds for unearned charges.

Insurance or Service Contract Charges Returned to Creditor. If any charge for required insurance is returned to the Creditor, it may be credited to your account or used to buy similar insurance or insurance which covers only the Creditor's interest in the vehicle. Any refund on optional insurance or service contracts obtained by the Creditor will be credited to your account.

Credits to your account will include both the amounts received by the Creditor and the unearned Finance Charge on those amounts. These credits will be applied to as many of your installments as they will cover, beginning with the first installment. You will be notified of what is done.

Required Repayment in Full Before the Scheduled Date. If you fail to pay any payment according to the payment schedule, if a proceeding in bankruptcy, receivership or insolvency is started by you or against you or your property, or if you break any of the agreements in this contract (default), the Creditor can demand that you pay all you owe on this contract at once. In figuring what you owe, the Creditor will give you a refund of part of the Finance Charge figured the same as if you had prepaid in full.

Repossession of the Vehicle for Failure to Pay. Repossession means that if you fail to pay according to the payment schedule or if you break any of the agreements in this contract (default), the Creditor can

take the vehicle from you. To take the vehicle the Creditor can enter your property, or the property where it is stored, so long as it is done peacefully. If there is any personal property in the vehicle, such as clothing, the Creditor can store it for you. Any accessories, equipment or replacement parts will remain with the vehicle.

Getting the Vehicle Back After Repossession. If the Creditor repossesses the vehicle you have the right to get it back (redeem) by paying the entire amount you owe on the contract (not just past due payments) plus any late charges, the cost of taking and storing the vehicle and other expenses that the Seller or the Creditor has had. In figuring the entire amount you owe on the contract, the Creditor will give you a refund for part of the finance charge figured the same as if you had prepaid your contract. Your right to redeem will end when the vehicle is sold.

Sale of the Repossessed Vehicle. The Creditor will send you a written notice of sale at least 10 days before selling the vehicle. If you do not redeem the vehicle by the date on the notice, the Creditor can sell it. The Creditor will use the net proceeds of the sale to pay all or part of your debt.

The net proceeds of sale will be figured this way: Any late charges and any charges for taking and storing the vehicle, clearing and advertising etc., and any attorney fees and court costs will be subtracted from the selling price.

If you owe the Creditor less than the net proceeds of sale, the Creditor will pay you the difference, unless required to pay it to someone else. For example, the Creditor may be required to pay a lender who has given you a loan and also taken a security interest in the vehicle.

If you owe more than the net proceeds of sale, you will pay the Creditor the difference between the net proceeds of sale and what you owe when the Creditor asks for it. If you do not pay this amount when asked, you may also be charged interest at the highest lawful rate until you do pay all you owe to the Creditor.

Collection Costs. If the Creditor hires an attorney to collect what you owe, you will pay the attorney's reasonable fee and any court costs. The attorney's fee will not exceed 15% of the amount that you owe.

Delay in Enforcing Rights and Changes of this Contract. The Creditor can delay or refrain from enforcing any of its rights under this contract without losing them. For example, the Creditor can extend the time for making some payments without extending others. Any change in terms of this contract must be in writing and signed by the Creditor. No oral changes are binding. If any part of this contract is not valid, all other parts will remain enforceable.

Warranties Seller Discloses. You understand that the Seller is not offering any warranties and that there are no implied warranties of merchantability, of fitness for a particular purpose, or any other warranties, express or implied by the Seller, covering the vehicle unless the Seller extends a written warranty or service contract within 90 days from the date of this contract.

The foregoing disclaimer of implied warranties does not apply if this contract covers a new vehicle that was obtained primarily for personal use unless you were informed in writing prior to signing this contract that the vehicle was sold on an "as is" or "with all faults" basis and that you bear the entire risk as to the quality and performance of the vehicle.

An implied warranty of merchantability generally means that the vehicle is fit for the ordinary purpose for which such vehicles are generally used. A warranty of fitness for a particular purpose is a warranty that may arise when the Seller has reason to know the particular purpose for which you require the vehicle and you rely on the Seller's skill or judgment to furnish a suitable vehicle.

This provision does not affect any warranties covering the vehicle which may be provided by the vehicle manufacturer.

Used Car Buyers Guide. The information you see on the window for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Notice of Substitution of Contract. If Seller obtained this vehicle from General Motors Corporation (GM) on installment credit terms, this contract will be substituted by Seller for and replace the Seller's obligation to pay GM for the vehicle you are purchasing. This substitution will not change the amount you have agreed to pay the Seller, the payment schedule, the finance charge or any of your rights and duties for this purchase. The terms of this contract set forth your entire and only obligation to Seller, GM, or any other holder of this contract.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST. ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

LEHMANN MICHAEL ALLEN
12341 HUMMINGBIRD ST
COON RAPIDS MN 55448

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

DMU114

1ST SECURED PARTY

LIEN HOLDER

Year	Make	Model	Title NR.
99	GMC	4WJMY	F2920L217
1GKDT13W3X2542436			08/16/99 NO
VIN		Security Date	Rebuilt

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

GMAC
3500 W 80TH ST #300
MINNEAPOLIS MN 55431-4433

EXHIBIT

B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13

Michael A. Lehmann,

Bky. No. 04-44875-RJK

Debtor(s).

Affidavit of J. Wood

I, J. Wood, of General Motors Acceptance Corporation, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. General Motors Acceptance Corporation has a security interest in the following (the "Collateral"):

N99 GMC JIMMY VIN/HIN: 1GKDT13W3X2542436.

2. \$8,499.21 is the outstanding balance under the contract as of September 1, 2004.


3. \$1,561.50 is the amount of the existing delinquency as of September 1, 2004.

4. \$9,300.00 is the replacement value of the Collateral.

5. Yes Appropriate insurance has been verified.

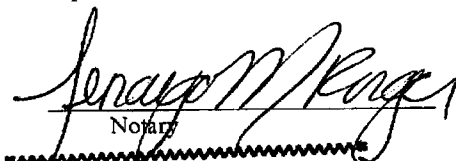
Further your affiant sayeth not.

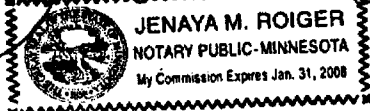
Dated: 9/17/2004



J. Wood
Bankruptcy Specialist
General Motors Acceptance Corporation

Subscribed and sworn to before me on
September 17, 2004



Notary

JENAYA M. ROIGER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2008